# NO SMOKE

## THE SHOCKING TRUTH ABOUT BRITISH JUSTICE

No Smoke! The Shocking Truth About British Justice
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TEL: 098 43779 INTERNATIONAL: (+353) 9843779

EMAIL: editor@checkpointpress.com

WWW.CHECKPOINTPRESS.COM

To my dad, Sandy King,

and to Skooby, Chi, Caz and Simon,

for helping me find the strength and courage to fly

# ACKNOWLEDGEMENTS

Perhaps the saddest realisation is that this book only exists as a result of tragedy. It arises from the suffering of ordinary people thrust into extraordinary circumstances.

Nothing can take away from the horror of those families who have lost a loved one to murder, and I can only express my deepest sympathy for the families whose loved ones' murders form the basis of this book.

It is not, and never has been, my intention to cause these families any further suffering.

However, the suffering and distress caused to the victims of miscarriage of justice and their families is also very real, and it is this which has led to the extensive investigation of the cases highlighted in this book.

The courage and determination of the victims themselves, and their families and friends is an inspiration. The strength and belief it takes to keep on fighting in the face of such dreadful injustice is enormous, yet each of them carries on, utterly committed to proving their innocence, and having their convictions overturned. Sadly, much of the rest of us go about our business, completely unaware of their plight, and oblivious to the fact that it could happen to any one of us.

There are others, much closer to home, without whom this book would simply never have made it into print.

Skooby and Chi, my entire inspiration for everything I do. Between you, you bring the greatest wisdom and understanding in my life – you taught me the real meaning of unconditional acceptance.

Caz, who wouldn't let me off the hook, not even for a minute, who pushed even when I thought I could do no more, and who never stopped believing in me.

Simon, who forces me to keep discovering myself anew, to keep questioning the truth, and to really find out what I believe in, by putting it to the test.

Kyle, who, aged just 10, took on the responsibility of making sure the page numbers tallied properly.

Betty, for absolutely everything!

Louise, who told me all those years ago, that it's ok to be me.

Fran and Mark, Phil, and all of the others, too numerous to name, who have joined me at various stages on this long journey.

Thank you all – none of this would have happened without you.

The author wishes to convey her deepest sympathy to the family of Sally Clark, who died on March 16th 2007.

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# INTRODUCTION

> "All research on the subject {of the Criminal Justice System} agrees that the public is, in fact, profoundly ignorant of the system, and… there is a duty to promote access to clear information and understanding that has, unfortunately, been lacking."
>
> JUSTICE's Response to the Auld Review, January 2002

There is a general feeling in the UK that our justice system, whilst not perfect, is one of the best in the world. It is perceived as open and fair; a process of thorough investigation, culminating with an outcome which is most likely to be correct. Miscarriages of justice, we believe, are few and far between, and when they do occur, there is often still a faint whiff of suspicion, a sense that there is no smoke without fire. This is partly because it seems so difficult to believe that in a system where a case has to jump through so many hoops, involving so many different people, they somehow *all* got it wrong. There is also the negative connotation of "getting off on a technicality" – the person claiming miscarriage of justice is perceived to have actually committed the crime, but has used a clever lawyer to find some legal loophole with which the conviction can be deemed unsafe.

It comes as quite a shock, then, to realise that our perception of the system and its reality are vastly different. Miscarriages of justice are not occasional unfortunate (or manufactured) events. In the decade 1989 – 1999, the Court of Appeal overturned more than 8470 criminal convictions – that is 770 successful appeals **every year.** At the Crown Court, in the same period, around 3500 convictions made earlier in the Magistrates Courts were also quashed **every year.** These figures, from the Lord Chancellor's Department's statistics, show quite clearly that miscarriages of justice are an everyday occurrence – more than 10 people, every day, of every week, of every month of every year are wrongfully convicted. And these are just the ones we know about. How many other people might there be, languishing in jail for a crime that they did not commit? For many people, the response to this question is "who cares?" The perception that miscarriages of justice occur only rarely, and involve people who are generally seen to be guilty of *something* anyway, is so strong, and so regularly and routinely reinforced, that public sympathy is virtually non-existent.

In the 10 years covered by the Lord Chancellor's statistics, more than 42,000 people had convictions against them overturned. That they were wrongly

convicted in the first place is a tragedy for them, for their families, and for the British Justice system. Yet nothing of any real merit seems to have been learned from this enormous failure of the system. In 1997, the Criminal Cases Review Commission was set up to investigate alleged miscarriages of justice. Currently, they receive around 800 cases per year, of which approximately one in 25 is referred to the Court of Appeal. It does seem a rather small number – just 32 cases per year, in light of the previous figure of nearly 800 per year. Has the system improved so drastically in just over 5 years (from 1999)? If so, how did that happen? What were the causes of such high incidence of wrongful conviction, and how were they rectified to the extent that we appear to be witnessing a 96% improvement rate?

In the space of just six weeks in 2006, four high profile cases hit the headlines in succession. On February 7th, Shirley McKie, a police officer who had been accused of leaving a fingerprint at the scene of a crime was finally cleared, after 9 years, of any wrong doing. On February 9th Sion Jenkins, accused of murdering his foster daughter, Billie-Jo, was acquitted, following three trials and two appeals. Evidence of "serious mistakes" in the trial and prosecution of Nat Fraser, who had been imprisoned for the murder of his wife (whose body has never been found), was revealed on March 14th, leading legal experts to claim "it could be difficult to convince an appeal court that he has not been the victim of a miscarriage of justice" (Scotsman March 14th 2006) and Steven Johnston had his murder conviction quashed on March 17th,

What is startling about three out of these four cases is the manner in which suspicion is still being encouraged as to their innocence. In Shirley McKie's case, for example, a spokesperson for the Scottish Criminal Records Office (who were shown to have mis-identified the fingerprint they claimed was Shirley's, then gone to great lengths to cover up this mis-identification) stated in a television interview that the officers involved *still stood by their original findings.* Pushed to agree that she was effectively saying Shirley McKie was lying, in complete contradiction the official outcome of the investigation, the spokeswoman simply repeated her statement that the original officers believed their finding on the fingerprint to be correct. Press coverage of both Nat Fraser and Sion Jenkins carries the unmistakable hint that although technically, they have not been found guilty, neither have they been proven innocent - and this, in a country whose judicial system is based on the premise that an individual is "presumed innocent until proven guilty." Quite simply, it is not required of any citizen to *prove their innocence.* It is the responsibility of the system to prove *guilt.* Only in the case of Steven Johnston has there been acceptance that police and the prosecution appear to have been guilty of cover-up, with-holding evidence, and manufacturing the case against Mr. Johnston and an inquiry has been set up (although it is to be carried out by Lothian and Borders Police, rather than an independent body).

Sadly, there has still been no justice for the victims – Billie-Jo Jenkins, Margaret Ross, Arlene Fraser and Drew Forsyth. Their murders remain un-solved, their murderers still at large, and free to strike again.

These four cases, however, bring us back to the questions raised earlier. What went wrong? And where else might the same things be happening? The tendency for fingers still to be pointed, even after a case has been completely discredited, means that the opportunity to examine how miscarriages occur, and what can be done to prevent them, is lost. If the majority of people have reason to believe that the guilty person has somehow managed to "wriggle out" of their conviction, they will also tend to believe that it's unfortunate, and perhaps even call for changes to the law which would prevent such "wriggling out" in the future. If people don't know what's broken, they can't know how to fix it – or even that anything needs fixed in the first place!

Until two years ago, I had no idea that anything was broken. I believed in the justice system, although I knew it had its faults. A chance meeting with someone who believed that a family member was a victim of a miscarriage of justice was to change all that. At the time, I was merely intrigued. Perhaps, like many people, I had an assumption that the relatives of almost everyone convicted of a serious crime don't want to believe that one of theirs could do such a thing, and will tend to convince themselves that there has been a mistake. What I found left me shocked and sickened. The information was there, easily accessible, for me, or anyone else to see. Because it had simply never occurred to me to ask the questions (perhaps because I believed there *were* no questions to be asked), I had never been exposed to the answers. The more I delved, the more apparent it became that something is terribly wrong with our system, but hardly anyone seems to know, or care.

As my investigations progressed, I found another curious phenomenon. Not only were people reluctant to discuss the issue of miscarriages of justice, and the suggestion that there may be some very serious flaws at the heart of our justice system, they would vigorously (and sometimes with hostility) defend their position that I was mistaken – *even with pages of documented evidence before them.* It reminded me of the children's story of the elephant in the sitting room. Everybody knows you don't find elephants in the middle of the sitting room floor, so everyone acts as if there is no elephant there, even though they can all see it. Why? In the absence of back-up from anyone else, each individual assumes the others really *can't* see the elephant, otherwise they'd say so. Secondly, it's an *elephant* for goodness sake! If there was really an elephant there, then everyone would be talking about it. So we ignore the evidence of our own senses, for fear of looking stupid, or being judged by others.

The elephant in the sitting room of our justice system is definitely there. But until more people are prepared to look at it, and admit its existence, thousands of innocent people will continue to be convicted of crimes they did not commit.

In order to highlight the extent of the problem, consider the following:

Imagine we are asked to vote for a new justice system, with the following rules:

1) The guilty verdict must be as a result of purely circumstantial evidence

2) There must be glaringly obvious "reasonable" doubt

3) There must be **no** DNA/forensic evidence linking the suspect to the crime

4) The suspect must not have been identified by formal means at or near the crime scene

5) There must be some suggestion of another person or persons being present at or near the crime scene (against whom no charges are being pursued)

6) There must be over-reliance on "expert" testimony, to the detriment of the suspect

7) Crucial, unsubstantiated evidence must have been given by someone with a vested interest in the suspect being convicted

8) There must be serious questions about timescale/ ability of the suspect to have been physically possible of carrying out the crime

9) Clothing must be a strong part of the prosecution's case

10) Character assassination must be a strong part of the prosecution's case

11) There must be evidence of pathologists/ forensic scientists selectively interpreting evidence to the prosecution's own ends

12) The suspect must be seen to have been of previous good character, and have no convictions/psychological conditions

Obviously, no-one with an ounce of sense would agree to such a justice system. **Yet all of the cases highlighted in this book have at least 10 out of the 12 items listed above, as critical features.** In every single case documented here, at least 10 of these points are present within the investigation and subsequent prosecution. This book exists as an attempt to answer the question of *how* these prosecutions could possibly be secured, beyond reasonable doubt, when the presence of many of the above factors, even on their own, introduces such doubt. Taken together, we find ourselves back with the elephant in the sitting room. If, for example, there is no DNA or forensic evidence linking the suspect to the crime, the suspect has never been identified at or near the crime scene, there are other people who have been identified at the scene, and crucial but unsubstantiated evidence is given by someone with a vested interest in seeing the suspect convicted, can we honestly conclude that the conviction is safe beyond reasonable doubt?

If, in the absence of more concrete evidence, the prosecution opts for character assassination of the suspect or defence witnesses, "expert" testimony of a highly technical and difficult to understand nature is a central part of the prosecution's approach, forensic data is presented in a selective and biased manner, and there are serious questions about the suspect's ability, either physically, or within the suggested time-scale, to have carried out the crime, can we rest easy that guilt has been proven beyond reasonable doubt?

This book will look at how these convictions are secured – at how the system itself is flawed, and how these flaws are exacerbated by personalities, the media, unexamined assumptions, and the inherent difficulty of asking "ordinary people" to make judgements on specialised or technical subjects about which they may have little or no knowledge or understanding.

A criticism leveled at most people who begin to investigate what may be miscarriages of justice is that we appear to have "forgotten" the victims. This, of course, is not the case. It serves no-one, least of all the victim, to have the wrong person convicted and, unpalatable as it is, impartial, unemotional examination of all the facts is a necessary factor in getting to the truth.

Also, there is a tendency for politicians and the media to emphasise a legal system which somehow favours offenders and ignores the needs and rights of victims, which, in turn, makes it much more difficult to objectively examine wrongful convictions. Where the public in general is led to believe that, in the vast majority of cases, only the guilty are imprisoned, investigations such as this one are seen to be the work of "do-gooders," who are standing up for the rights of people who have done bad things. Yet the cases highlighted in this book, and the many, many more which formed the basis of its research, all involve people who have not been proven to have done anything wrong. This is not an issue of technicalities or semantics. As a civilised society, we

absolutely ***must*** ensure that we have satisfactorily proven that a person is guilty of the crime for which we are taking his or her liberty.

Also, the choice of which cases have been highlighted and which have been left out should not be taken as any sort of indication that some cases are more "worthy" than others. I reviewed literally dozens of cases; it would not have been possible to include all of them in one volume, so some sort of criteria had to be decided upon, in order to select. Quite simply, those with the largest number of points from the list above were chosen, since they highlight the most extreme examples of unsafe convictions, in that there is so much evidence to the contrary, it would, at first glance, appear to be well nigh impossible to secure any conviction.

As you, the reader, examine each case, and discover the similarities which crop up within police investigations, judges' directions, expert testimony, the role of the media, and so forth, I invite you to bear in mind just one thought:

This could happen to any one of us.

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## CHAPTER ONE

# THE BRITISH JUSTICE SYSTEM

There are so many threads woven into the fabric which produces miscarriages of justice and unsafe convictions that it is difficult to find a starting point. It is not just a case of finding the bits that have gone wrong, and fixing them – like the knots in a fisherman's net, every piece you pick up is inextricably linked to all of the others. Singling out "the justice system" for example, misses the point – the system is not a faceless, feelingless machine, because its component parts are human beings, with their own thoughts, beliefs, prejudices and influences. Indeed, part of the problem is that we have shared beliefs and unexamined assumptions which can often prevent us from being able to take the necessary step back and realise that something is amiss in the first place. As is the case generally, unless something affects us directly and personally, we tend to take a face value approach. Since the majority of us will have little to do with the criminal justice system as a whole, and failures within that system in particular, we will have little reason or motivation to look any deeper into what appears to be a functioning, effective apparatus. The whole negative connotation of being involved with the criminal justice system serves to keep us from delving too deeply – quietly hidden in the depths of many of our belief systems is the idea that those who *do* become involved with the criminal justice system must have done something to become involved – and that something has to be something that the wider population would regard as wrong. This reasoning actually helps maintain the status quo, by making it very difficult for the general public to accept that there are many, many people caught up in flaws and failures in the criminal justice system, people who have not done anything wrong. Our

prejudice against those who have been imprisoned blinkers us from the truth, and this prejudice is sustained by social, moral and political influences, as well as the media. In order for the system to function at all, a "them and us" mentality needs to be fostered – "we" are right because we obeyed the law, and the proof of this is that we have had no dealings with the criminal justice system, and have not been imprisoned. Therefore, "they" *must* be wrong, because they have gone all the way through the criminal justice system and have landed up in jail. (Of course, this also uncovers the assumption that the system works, in that someone who has not done anything wrong will be exonerated by the system – if they are not, then it is they, and not the system, who must be at fault.) Murder cases, particularly high profile cases with intense media coverage, bring sharply into focus all of our assumptions and prejudices.

We have a tendency to believe, in general, that we know what happens in the event of a murder. We assume that there are specific practices and procedures which swing into action, following a logical, prescribed path, and that those involved are working within specified rules and guidelines. In essence, most people assume the process goes something like this:

## THE INVESTIGATION

A body is found. The police arrive and seal off the area, and begin a painstaking search for evidence. Modern science allows for detailed forensic and DNA analysis, so, we presume, even the tiniest piece of evidence may yield rich information. The "murder squad" – officers trained specifically to be part of this elite team - keep the scene in a sterile condition, ensuring that nothing is allowed to contaminate it, whilst the evidence is collected. Meantime, other officers are out asking questions, trying to get a picture of the who, where, when, what and why of the case. Everything is collected, everything is analysed, in a logical, impartial manner. As the pile of evidence increases, certain factors begin to piece together, creating a picture of what has happened, and who might be responsible. Once this logical, rational, procedure has been carried out, the police are likely to have their suspect, and an idea of what other evidence, if any, they will need to prove that person's guilt. Eventually, with all the required evidence in place, the suspect is arrested and charged, and a date is set for the court case.

## THE TRIAL

All of the evidence collected during the police investigation is made available to both the prosecution and the defence. (Note the unspoken assumption that all of the evidence collected during the police investigation is *not* available to either defence or prosecution prior to this point.) Each side agrees to let the other know what evidence and witnesses it intends to use during the trial.

A jury is selected randomly – aside from the obvious consideration that jurors must not have any information about the defendant or the case, and must not be prejudicial in any way. Both the prosecution and the defence present their cases to the jury, using witnesses and evidence to back up their claims. The witnesses can be cross-examined to test the validity of their testimonies. Independent expert witnesses can be called to give testimony on areas which are beyond the scope or experience of ordinary people. Forensic evidence, DNA evidence, and pathology reports are presented by court or governmental authorities, such as Home Office Pathologists, and so on. The judge may advise the jury on points of law, but remains impartial, in that he or she does not lead the jury in favour of the arguments presented by either the prosecution or the defence.

Finally, after all the evidence has been heard, the main counsel for prosecution and defence each sum up their case, the judge sums up the whole case in an impartial manner, and the jury retires to consider its verdict. The jury, throughout, has not been allowed to discuss the case with anyone other than other jurors, and is not allowed access to anything which may interfere with the evidence as it has been presented in court. After careful consideration of all that has been presented in court, the jury comes to its decision, based on a logical, rational assessment of the evidence. In a murder case, this should be unanimous, or at least a very large majority.

And there we have it - the perfect case.

This view of the legal system is strongly supported by television and film depictions of crime fictions – everything is crystal clear, the truth is uncovered by meticulous, untarnished investigation, and there is a logical progression from one stage or point to all of the others.

We use terms such as “presumed innocent until proven guilty” and “beyond reasonable doubt,” confident that we know exactly what they mean, and equally confident that they have concrete, definitive specifications – that there is a common measure that quantifies the “reasonable” in reasonable doubt, and that “proven” in this context carries the same meaning as it does in its scientific context. The “burden of proof” we assume has an identifiable, recognisable property, that can be clearly seen to have been “discharged.” Evidence is exactly that – information, people or objects which provide proof to back up claims made in court. The main purpose of a court case, we believe, is to get to the truth of the matter, to decide whether or not the accused person carried out the actions of which he or she is accused.

Yet even a superficial examination of some of the terms used begins to uncover the reality – that this perfection which we perceive in our justice system exists nowhere but in our imaginations:

"Independent expert witnesses" are not independent, in the context we understand. They are independent, in that they do not belong to the case, but that is as far as it goes. Both prosecution and defence bring in their own "independent" expert witnesses, and these witnesses are paid by whichever side brought them in. Clearly, the prosecution, for example, is not going to pay for a witness whose findings are going to undermine the prosecution case, and the same is true for the defence. Immediately, the whole concept of independent expert witnesses as *impartial* expert witnesses is compromised.

The same is true of forensic scientists – there is no state employed body of forensic scientists who are wheeled out to give evidence in court cases. With the exception of Home Office accredited pathologists, they are all private institutions, their fees paid by either the prosecution or the defence. Of course, they are as liable to cross-examination as any other witness, but their standing as expert independent witnesses can make such cross-examination more difficult, and possibly less credible – how does the average person know, for example, what significance lividity marks on a body suggest, without guidance from an expert? If that expert's guidance is then questioned, and alternatives are suggested, how does the average person know which to rely on?

The unchallenged acceptance that independent witnesses have no vested interest in the evidence they give leads us to trust such evidence as dependable and true. Indeed, the suggestion that these witnesses are paid because their particular opinion weighs more heavily to one argument than another seems almost offensive, bordering on claims of corruption, and we have a very strong belief that our justice system, one of the best in the world, could not possibly be corrupt. As a result, we are left with an uneasy stand-off – on the one hand, we cannot escape the reality that these witnesses are, indeed, paid for their findings, and that they are chosen specifically *because* their findings support the theory being floated by one side or the other, yet on the other hand, we have a very real need to continue to believe that our system is fair, moral and transparent. At best, we console ourselves with the acceptance that at least each side has a chance to acquire "independent" witnesses whose evidence supports its own particular stance. We can regain some comfort from the understanding that scientific findings can draw different conclusions from the same initial data, and that is the nature of scientific investigation. Yet even this, in itself, is an indicator of our tendency to selectively embrace or reject information, dependent on our objective – there is a widely held belief that that which is proven, scientifically, is irrefutable. Logically, then, if different conclusions are being drawn from the same data, scientific *proof* has not been attained, and, as a result, the "evidence" of these witnesses is still in its experimental or investigative phase. Even though this is the case, there is still a tendency to trust it, because of its assumed link with the scientific.

So much for the independent, but what of what we understand by the term "expert?" The Oxford dictionary defines an expert as "one with specialist skills or knowledge representing mastery of a particular subject." Mastery of a subject, one would presume, goes beyond the experimental or investigative, to a place of certainty. If that were truly the case, then it would make sense for the prosecution and defence to share the cost of expert witnesses, since the evidence given by these witnesses would be truly impartial.

But who decides what constitutes mastery? Surely only another expert can decide if someone else is an expert? This is not just a matter of mere semantics – whereas, in the not too distant past, "expert" appeared to be limited to a small number of highly trained, well qualified individuals whose output displayed their expertise, the modern application of the term 'expert' is much broader, and, as a result, much more difficult to define. Take, for example, an expert in facial expression or body language. It is far less easy to measure such a person's expertise by their output. There is no set–in-stone science which proves irrefutably that someone moving their eyes in a certain way, just before answering a question, is always lying, or that someone crossing their arms across their chest is always defensive. Yet because these people are coated with the veneer of authority afforded to experts, their opinions (and, at the end of the day, that is often all they are – there is little genuine scientific proof to back them up) are given a great deal of credence in courts.

Another fantasy that feeds our perception of the validity of the investigative/judicial process is the concept of "all of the evidence." We accept, pretty much without question, that all of the evidence which has been collected during the investigation is (a) all of the evidence that could possibly have been collected, and (b) all of the evidence that is used during the trial. Neither, in fact, is true. What evidence is collected is a decision taken by the officers carrying out the investigation. If they decide that something is not worth pursuing, or simply fail to notice something, that is *available* evidence that will never make it into the courtroom. Of course, such decisions are critical at the early stages of an investigation, since a decision not to pursue something, or a failure to notice something, can drive the investigation in a specific direction, whether or not that ends up being the correct direction. This raises the question of what, exactly, constitutes the "correct direction." The answer to that question is dependent on the real, rather than the assumed objective of the investigation itself. We are minded to believe that the investigation is driven by a search for the truth – that no prior decisions are taken as to what may or may not be significant in determining that truth. However, if the investigation is driven by the requirement to find someone to prosecute, then the decisions as to what to pursue, or not, take on a wholly different dimension. Something which may lead to the truth, but is unlikely to lead to a prosecution, may be discarded in favour of that which may not be "the truth" in the bigger picture, but fits more neatly with that which is likely to secure a

prosecution. This is an uncomfortable factor, and one which we often overlook, because, once again, it calls into question the fairness, morality and transparency of the whole justice system. It is easier to believe that any investigation will always be driven by a search for the truth, but, in reality, this is just not the case. Too many other factors come into play – financial considerations, media attention, public pressure, the image of the police force involved, the length of an investigation – there are many, many inputs which will impact on just what truth, exactly, is sought in an investigation.

Once the evidence is collected, the "disclosure officer" then lists what evidence is deemed to be relevant, both for the prosecution and for the defence. This is an extremely important factor, because the disclosure officer works for the police. Therefore, if the disclosure officer deems a piece of evidence irrelevant, that evidence is simply recorded in a separate a list or schedule. But obviously, what the prosecution deems relevant will not necessarily be the same as what the defence might deem relevant. The defence can request full details of anything on the list or schedule, but to do so, must give details of their client's defence, and their reasons for requesting the item. Having disclosed their defence (which is recorded) this can actually later be used against them – if, for instance, the client's defence changes before the case, negative inference can be drawn from this change. Further, the defence having "revealed their hand," the police are now in a position to reconsider their case, and gather any extra evidence, or approach defence witnesses. All of this, however, is quite often academic, since items recorded on the schedule are routinely labelled in such a way that their significance cannot be ascertained, leading, in some cases, to crucial evidence being lost to the defence in this manner.

Another question is this – to whom, exactly, is the "disclosure officer" answerable? The answer is, initially, to the senior investigating officer, and ultimately, to the Crown Prosecution Service. In essence, the editor of the disclosure officer's output is the senior investigating officer in the case. Part of a "new Crown strategy towards major trials" involves closer cooperation between an allocated QC, the Crown Prosecution Service, and the senior investigating officer "at the earliest possible stage," according to the government's recent new "Justice for All" legislation. This raises some uncomfortable issues with regard to the disclosure officer – since the objective of the Senior Investigating Officer and the allocated QC is to secure a conviction, is it possible that they may inadvertently influence the disclosure officer's decisions as to what is deemed "relevant" or not?

Finally, there is the belief that both sides will reveal to each other all of the evidence they intend to use during the trial. In reality, this very often does not happen. Once one side or the other has sprung evidence, or a witness, without prior notice, the judge may rule it as inadmissible but it is too late – the jury has heard the evidence, and nothing to refute it. Being told that it is inadmis-

sible actually counts for nothing, in that the jury does not have to give reasons for its verdict – if the jury thinks the inadmissible evidence is of some worth, or carries some persuasion, it is as likely to give as much weight to that evidence as to any other admissible evidence.

Even just on these few examples, it becomes apparent that our justice system bears little resemblance, in reality, to our perception of it. But that leaves us in a difficult position, because it is a system on which we rely to ensure criminals are properly apprehended and punished, and it is a system on which we rely to be fair, impartial, and ultimately, effective.

For the majority of us, it is easier to believe that there are some quirks and anomalies in the system, but that it basically does what we need it to do. The stark truth is that there are more than just a few quirks and anomalies – the entire system is flawed throughout, and, in many, many cases, it does not do what we need it to do – in fact it does quite the opposite, leaving those who have committed some of the most awful crimes free and undetected, whilst imprisoning completely innocent people.

The police investigation is supposed to provide enough evidence to convince the Crown Prosecution Service that the case should proceed to court – that there is enough evidence to secure a conviction, otherwise, it would be a complete waste of time. This should be a safeguard against cases getting into court with insufficient evidence, yet the reality, again, proves that it is not the safeguard it appears to be. With the advances of technology, many cases appear, on the surface, to have evidence, but the quality does not match the quantity. Several pages of analysis of fibres, or composition of rock, or whatever, may be interesting, but unless they provide evidence relevant to the case, they are worthless. Yet, in many of the cases highlighted here, it is precisely that type of evidence which has swung the balance between a case having enough evidence or not. The existence of the Crown Prosecution Service safeguard can actually have the opposite effect, once the case reaches the courts. Since the jurors know that they would not be sitting on the case at all if the Crown Prosecution Service had not decided that there was enough evidence to proceed, the jury sets out from a slightly biased position – the belief that there is, theoretically, enough evidence to convict the person in the dock. Just how we manage to fit this comfortably with the notion that a person is "presumed innocent until proven guilty" is not clear. How can we accept, on the one hand, that the person in the dock is to be presumed innocent when we know, on the other, that a large investigative body has decided that there is enough evidence to prove that he or she is not?

Again, in an ideal world, the jurors would simply weigh up the evidence in its own right, and decide whether or not it provides the necessary proof. But we cannot escape the fact that they begin from a standpoint that an authority with

a great deal of experience in these matters has *already* examined all the evidence they are about to hear, and decided that it is sufficient to convict.

As with every other aspect of the system, the Crown Prosecution Service itself is made up of human beings, who are making decisions not only on the evidence presented to them, but through the filter of their own beliefs and persuasions. This may go some way to explaining how so much technical data comes to be accepted as sufficient evidence, especially in those cases where such data is extremely complicated or detailed. The tendency to rely on what appears to be scientific evidence is not confined to the judicial system – as a society in general, we have come to place a great deal of faith on the scientific and logical. The irony is, the two do not always go hand in hand – perfectly reasonable scientific information may have no logical connection with a case, but because, in our minds, the two are inextricably linked, we make the mistake of assuming that there *must be* some logical connection, otherwise that information would not be presented. This is another elephant in the sitting room scenario – where several people are all required to evaluate data about which they may have little real knowledge, and where their continued employment depends on that evaluation, if everyone else seems to think the data is there for good reason, each individual is then under pressure to "find" the connection, or at least accept its existence. It is only when individuals are freed from this pressure, or have no reason to accept or believe one thing or another, that this institutionalised flaw becomes apparent. Confined by the parameters of their job, and the expectations of their organisation, other avenues of possibility are effectively closed off to those employed within such a system. Again, staff at the Crown Prosecution Service begin their investigation from a slightly biased standpoint – the underlying assumption is that the police are not going to present a case unless they feel it is strong enough to proceed to court, so, in effect, it becomes something of a "box ticking" exercise, particularly in view of new legislation which encourages the involvement of the Crown Prosecution Service in the police investigation from an early stage.

This drip down effect from the jury relying on the Crown Prosecution Service to have checked that there is sufficient evidence, to the Crown Prosecution Service expecting the police to provide sufficient evidence, places the responsibility for providing sufficient evidence squarely at the feet of the police. While, at first glance, this might seem obvious, in that it is, after all, the police who carry out the investigation, it reveals yet another underlying assumption. The police are responsible for providing sufficient evidence to secure a *conviction*. That is not the same as the police being responsible for getting to the truth, and this is a critical factor. The pressure on the police to make an arrest, especially in high profile cases, is enormous. When an investigation is ongoing, the pressure mounts, and it does not take too large a leap of the imagination to see how this is likely to affect investigative procedures.

Someone, somewhere, has to make a decision about which lines of enquiry to follow up, and which to leave. It is here, at this particular stage, that many investigations are dangerously narrowed down. Having cut out several limbs of possible enquiry, the investigative team is now left to find its answers from the remaining available information. Rather than continuing to gather information, the process becomes one of examining a limited number of factors and asking "where does this piece fit." That it might not fit anywhere is no longer a consideration – the narrowing down of investigations in this manner demands that sense be made from the "now available" evidence.

The result is often a form of self-fulfilling prophecy. Assumptions are drawn regarding what is most feasible or likely, in order to narrow down the investigation. On many occasions, these assumptions reveal an underlying prejudice on the part of the officers making them – one common reference is that "85% of victims are murdered by someone known to them." The pertinent question is, of course, what percentage of investigations is run on this assumption? In every one of the 15% of cases where the killer is *not* known to the victim, this assumption will automatically lead the investigation in the wrong direction, and close off avenues of enquiry which are more likely to lead to the murderer.

At the same time, vast amounts of police time will be wasted trying to piece together data which cannot be pieced together. However, where an investigating team is convinced that it is on the right track, it will try extremely hard to "make those pieces fit" - along with a narrowed down field of enquiry comes a narrowed down form of reasoning. This is not limited simply to police enquiries, of course – it exists in almost every field of human activity. Because we do not have unlimited access to everything available, we are required to work with, and make sense of, that to which we *do* have access.

However, in police investigative procedures, the results of coming to believe that this narrowed down field of enquiry is the *whole* field of enquiry, can have devastating results.

It is not just a case of understanding police investigations in their own right, of course – as has already been pointed out, no one part of the system exists independently of the others – police investigations are shaped and driven by other authorities and institutions, and themselves impact on other authorities and institutions. The following chapters attempt to trace the interplay of the various aspects which lead to wrongful convictions, and to examine just how they continue to influence the outcomes of court cases to the present day.

Firstly, we will examine the actual cases themselves, the facts and details which led to these convictions. Then, with a wealth of examples to hand, we will look at the wider picture.

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